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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
TOLEDO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

PRO-TEC COATING COMPANY,

Defendant.

3 : 98CV7749

CIVIL ACTION NO.

JUDGE DAVID A. KATZ

CONSENT DECREE

I. BACKGROUND

WHEREAS, Plaintiff, the United States of America ("Plaintiff" or "the United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), has filed a Complaint alleging that Defendant, Pro-Tec Coating Company ("Defendant" or "Pro-Tec"), commenced construction of a major emitting facility and a major modification to a major emitting facility in violation of the Prevention of Significant Deterioration ("PSD") requirements at Part C of the Clean Air Act (the "CAA"), 42 U.S.C. §§ 7470-7492, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the "PSD Rules");

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WHEREAS, Plaintiff further alleged that Defendant commenced construction of a major emitting facility and major modification to an existing major emitting facility in Leipsic, Ohio, without first obtaining the appropriate PSD preconstruction permits required by the Ohio State Implementation Plan ("SIP") U.S. EPA approved pursuant to 42 U.S.C. § 7410;

WHEREAS, U.S. EPA issued a Notice of Violation with respect to such allegations to the Defendant on May 4, 1998 (the "NOV");

WHEREAS, the Defendant has denied and continues to deny the violations alleged in the NOV and the Complaint;

WHEREAS, the United States and the Defendant have agreed that settlement of this action is in the best interest of the parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, the United States and the Defendant have consented to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaint or Notice of Violation, it is hereby ORDERED AND DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and over the parties to this action. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 7413(b). The Complaint states claims upon which relief may be granted against Defendant.

2. Solely for the purposes of this Consent Decree and the underlying Complaint, Defendant waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

3. This Consent Decree shall apply to and be binding upon the United States and upon Pro-Tec and its successors and assigns. In any action to enforce the terms of this Consent Decree, Pro-Tec shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees to take any actions necessary to comply with the provisions hereof.

4. No change in ownership of the Facility or any portion thereof shall in any way alter Pro-Tec's responsibilities under this Consent Decree; nor shall any change in corporate status or ownership affect Pro-Tec's obligations under this Consent Decree. At least thirty (30) days prior to transferring ownership or operation of any part of the Facility, Pro-Tec shall give notice of the terms of this Consent Decree to the prospective successor owner or operator of the Facility or portion thereof, and shall simultaneously verify to the United States in writing, in the manner set forth in Section XI (Notice), that such notice has been given. No such sale or transfer shall relieve Pro-Tec of any obligation set forth herein unless agreed to in writing by the United States and approved by the Court.

### **IV. DEFINITIONS**

5. Unless otherwise expressly stated, the terms used in this Consent Decree that are defined in the CAA, or in regulations promulgated thereunder, shall have the meanings set forth in such definitions.

6. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

"BACT" means Best Available Control Technology, as defined at 40 C.F.R. § 52.21(b)(12).

"CAA" means the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

"CGL" means Continuous Galvanizing Line. CGL #1 is the continuous galvanizing line constructed in or around 1991. CGL #1 includes, among other components, an annealing furnace (P001) and two primary boilers (B001 and B002). CGL #2 is the continuous galvanizing line constructed in or around 1997. CGL #2 includes, among other components, an annealing furnace (P010) and two primary boilers (B043 and B044).

"Commissioning" means the initial alignment, start-up, and equipment performance trials to verify machine operations prior to initiating production of any prime commercial product.

"Consent Decree" or "Decree" means this Consent Decree and all attachments hereto, and all modifications of this Consent Decree.

"Day" means a calendar day unless expressly stated to be a Working Day. "Working Day" means a day other than a Saturday, Sunday or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period will run until the close of business of the next Working Day.

"Defendant" means Pro-Tec Coating Company.

"Facility" means the facility currently owned or operated by Pro-Tec at 5000 County Road #5, Leipsic, Ohio 45856.

"Interest" means a rate of interest at the rate specified for a money judgment in a civil case recovered in a district court pursuant to 28 U.S.C. § 1961.

"OEPA" means the Ohio Environmental Protection Agency.

"Paragraph" means a portion of this Consent Decree identified by an arabic number or upper case letter.

"Parties" means the United States of America and Pro-Tec.

"Permit to Install" means a permit to install issued by OEPA pursuant to Ohio Admin. Code Chapter 3745-31.

"Plaintiff" means the United States of America.

"Prime Commercial Product" means coated product which is manufactured to meet customer specifications or order requests. Prime commercial product includes a product which is manufactured for the purpose of satisfying an order request or meeting customer specifications but failed to meet the requirements of the order or customer. Prime commercial product also includes product which is initially manufactured for the sole purpose of commissioning but later is used to satisfy an order or meet customer specifications.

"Section" means a portion of this Consent Decree identified by a roman numeral.

"State" means the State of Ohio.

"United States" means the United States of America and its departments and agencies, including the U.S. EPA.

"U.S. EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Work" means all activities Pro-Tec is required to perform under this Consent Decree.

## **V. COMPLIANCE**

### **A. Permits**

7. Not later than seven (7) days after entry of this Consent Decree, Pro-Tec shall apply to OEPA for a modified Permit to Install for CGL #1 that incorporates the pollution control equipment and the enforceable allowable mass emissions rates required by Paragraphs 9 and 10 of this Consent Decree. Pro-Tec shall submit a copy of the application to U.S. EPA concurrently with its submission to OEPA.

8. Not later than seven (7) days after entry of this Consent Decree, Pro-Tec shall supplement its PSD Permit application for CGL #2 to incorporate the pollution control equipment and the enforceable allowable mass emissions rates required by Paragraphs 12 and 13 of this Consent Decree. Pro-Tec shall submit a copy of the application to U.S. EPA concurrently with its submission to OEPA.

### **B. Installation of Pollution Control Equipment at CGL #1**

9. Not later than one hundred eighty (180) days after entry of this Consent Decree, Pro-Tec shall install, and thereafter operate and maintain, a Selective Catalytic Reduction ("SCR") unit to control continuously nitrogen oxides ("NOx") emissions from the CGL #1 annealing furnace (P001) to an emission rate not to exceed the emission rate set forth in the final, federally-enforceable modified Permit to Install or an emission rate of 0.10 lbs. NO<sub>x</sub>/mm BTU, whichever is more stringent. Not later than two hundred ten (210) days after entry of this Consent Decree, Pro-Tec shall conduct a stack test to demonstrate compliance with the emission rate required by this Paragraph. Pro-Tec shall conduct stack tests for this purpose on a semi-annual basis (i.e., once every 180-210 days) until two consecutive stack tests demonstrate that

NO<sub>x</sub> emissions from the CGL #1 annealing furnace do not exceed the emission rate required by this Paragraph.

a. If any stack test fails to demonstrate compliance with the emission rate required by this Paragraph, Pro-Tec shall conduct a follow-up stack test within thirty (30) days of the failed stack test to demonstrate compliance. All stack tests shall be conducted in accordance with U.S. EPA reference test methods set forth at 40 C.F.R. Subpart 60, Appendix A. Pro-Tec shall notify U.S. EPA in writing of its intent to conduct a stack test not less than fourteen (14) days prior to the scheduled date of any stack test conducted to determine compliance with the emission rate required by this Paragraph, and U.S. EPA shall have the right to observe any such stack test. Pro-Tec shall be liable for daily stipulated penalties pursuant to Section VII of this Consent Decree if any stack test fails to demonstrate compliance with the required emission rate, or is interrupted prior to its completion for reasons other than equipment malfunctions or safety considerations, commencing on the date of such stack test and continuing until a follow-up stack test demonstrates compliance. Pro-Tec shall notify U.S. EPA in writing not later than fourteen (14) days after each of the following occur (or within seven (7) days of the entry of this Consent Decree, whichever is later):

- i. installation of the SCR unit is completed;
- ii. operation of the SCR unit begins; and
- iii. each stack test required under this Paragraph is completed.

Pro-Tec shall submit to U.S. EPA the results of each stack test required under this Paragraph, including the results of any stack test interrupted prior to its completion, within thirty (30) days after conducting such stack test.



10. Not later than ninety (90) days after entry of this Consent Decree, Pro-Tec shall install, and thereafter operate and maintain, natural gas-fired Low-NO<sub>x</sub> burners to achieve continuously an emission rate not to exceed 0.033 lbs. NO<sub>x</sub>/mm BTU from each of the two primary boilers (B001 and B002) at CGL #1. Not later than two hundred ten (210) days after the entry of this Consent Decree, Pro-Tec shall conduct a stack test for NO<sub>x</sub> at each of the two primary boilers (B001 and B002) at CGL #1. Each stack test shall demonstrate that NO<sub>x</sub> emissions from each boilers does not exceed 0.033 lbs. NO<sub>x</sub>/mm BTU. All stack tests shall be conducted in accordance with U.S. EPA reference methods set forth at 40 C.F.R. Subpart 60, Appendix A. Pro-Tec shall notify U.S. EPA in writing of its intent to conduct a stack test not less than fourteen (14) days prior to the scheduled date of any stack test conducted to determine compliance with the emission rate set forth in this Paragraph, and U.S. EPA shall have the right to observe any such stack test.

a. Pro-Tec shall be liable for daily stipulated penalties pursuant to Section VII of this Consent Decree if any stack test fails to demonstrate compliance with the emission rate set forth in this Paragraph, or is interrupted prior to its completion for reasons other than equipment malfunctions or safety considerations, commencing on the date of such stack test and continuing until a follow-up stack test demonstrates compliance. Pro-Tec shall notify U.S. EPA in writing not later than fourteen (14) days after each of the following occur (or within seven (7) days of the entry of this Consent Decree, whichever is later):

- i. installation of the Low-NO<sub>x</sub> burners is completed;
- ii. operation of the Low-NO<sub>x</sub> burners begins; and
- iii. each stack test required under this Paragraph is completed.

Pro-Tec shall submit to U.S. EPA the results of each stack test required under this Paragraph, including the results of any stack test interrupted prior to its completion, within thirty (30) days after conducting such stack test.

**C. Carbon Monoxide PSD Analysis at CGL #1**

11. Not later than two hundred ten (210) days after entry of this Consent Decree, Pro-Tec shall conduct a stack test for carbon monoxide ("CO") to demonstrate that the installation of pollution control equipment at CGL #1 required by Paragraphs 9 and 10 results in CO emissions at CGL #1 that are less than one hundred (100) tons per year. The stack test shall be conducted in accordance with U.S. EPA reference methods set forth at 40 C.F.R. Subpart 60, Appendix A. Pro-Tec shall notify U.S. EPA in writing of its intent to conduct the stack test not less than fourteen (14) days prior to the scheduled date of the stack test, and U.S. EPA shall have the right to observe the stack test. Pro-Tec shall submit to U.S. EPA the results of the stack test required under this Paragraph within thirty (30) days after conducting such stack test.

a. If the stack test fails to demonstrate that CO emissions at CGL #1 are less than one hundred (100) tons per year, Pro-Tec shall submit an application for a modified permit to OEPA that includes a complete PSD analysis for CO at CGL #1, including a top-down BACT analysis and a BACT determination, in accordance with 40 C.F.R. § 52.21, not later than two hundred forty (240) days after entry of this Consent Decree. Pro-Tec shall employ BACT for CO at CGL #1 not more than fifteen (15) days after the issuance of the permit incorporating BACT for CO. A copy of the application for the modified permit shall be submitted to U.S. EPA at the same time it is submitted to OEPA.

**D. Installation of Pollution Control Equipment at CGL #2**

12. Prior to the commencement of operation at CGL #2, Pro-Tec shall install, and shall thereafter operate and maintain, two Selective Catalytic Reduction ("SCR") units (vented through a single stack) to control continuously NO<sub>x</sub> emissions from the CGL #2 annealing furnace (P010) to an emission rate not to exceed the emission rate set forth in its federally-enforceable PSD Permit or an emission rate of 0.08 lbs. NO<sub>x</sub>/mm BTU, whichever is more stringent. For purposes of this Consent Decree, "commencement of operation at CGL #2" shall not include the Commissioning of CGL #2; provided, however, that the Commissioning of CGL #2 shall not last longer than ninety (90) days unless the SCR units are installed and operating and meeting the emission rate required by this Paragraph. Any product produced during the Commissioning of CGL #2 shall not be sold as Prime Commercial Product. Not later than two hundred ten (210) days after entry of this Consent Decree, Pro-Tec shall conduct a stack test to demonstrate compliance with the emission rate required by this Paragraph. Pro-Tec shall conduct stack tests for this purpose on a semi-annual basis (i.e., once every 180-210 days) until two consecutive stack tests demonstrate that NO<sub>x</sub> emissions from the CGL #2 annealing furnace do not exceed the emission rate required by this Paragraph.

a. If any stack test fails to demonstrate compliance with the emission rate required by this Paragraph, Pro-Tec shall conduct a follow-up stack test within thirty (30) days of the failed stack test to demonstrate compliance. All stack tests shall be conducted in accordance with U.S. EPA reference test methods set forth at 40 C.F.R. Subpart 60, Appendix A. Pro-Tec shall notify U.S. EPA in writing of its intent to conduct a stack test not less than fourteen (14) days prior to the scheduled date of any stack test conducted to determine compliance with the

required emission rate, and U.S. EPA shall have the right to observe any such stack test. Pro-Tec shall be liable for daily stipulated penalties pursuant to Section VII of this Consent Decree if any stack test fails to demonstrate compliance with the required emission rate, or is interrupted prior to its completion for reasons other than equipment malfunctions or safety considerations, commencing on the date of such stack test and continuing until a follow-up stack test demonstrates compliance. Pro-Tec shall notify U.S. EPA in writing not later than fourteen (14) days after each of the following occur (or within seven (7) days of the entry of this Consent Decree, whichever is later):

- i. Commissioning of CGL #2 begins;
- ii. installation of each SCR unit is completed;
- iii. operation of each SCR unit begins;
- iv. commencement of operation at CGL #2 occurs; and
- v. each stack test required under this Paragraph is completed.

Pro-Tec shall submit to U.S. EPA the results of each stack test required under this Paragraph, including the results of any stack test interrupted prior to its completion, within thirty (30) days after conducting such stack test.

13. Prior to the commencement of operation at CGL #2, Pro-Tec shall install, and shall thereafter operate and maintain, natural gas-fired Low-NOx burners to continuously achieve an emission rate not to exceed 0.033 lbs. NOx/mm BTU at the two primary boilers (B043 and B044) at CGL #2. Not later than two hundred ten (210) days after entry of this Consent Decree, Pro-Tec shall conduct a stack test for NO<sub>x</sub> at each of the two primary boilers (B043 and B044) at CGL #2. Each stack test shall demonstrate that NO<sub>x</sub> emissions from each boiler does not exceed